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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,590	05/03/2002	Eyal Eliav	IR 6888-01	2704
30751	7590	11/09/2004	EXAMINER	
BANNER & WITCOFF, LTD., ATTORNEYS FOR RESERVE CLIENT NO. 3 1001 G STREET, N.W., 11TH FLOOR WASHINGTON, DC 20001-4597			CHIN, RANDALL E	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/063,590	Applicant(s) ELIAV ET AL. 77	
	Examiner Randall Chin	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 6-7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 29, 2004.
2. Applicant's election of Figs. 1 and 2, claims 1-5 and 8-18, in the reply filed on October 29, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
3. The petition filed October 21, 2002 under 37 CFR 1.48 requesting that Mr. Ogg be added as an inventor to the instant application is hereby granted.

Claim Objections

4. Claims 1, 14 and 17 are objected to because of the following informalities:
Claim 1, line 12, delete "tooth" for consistency.
Claim 1, line 12, after "dentiture", insert --,-- for clarity.
Claim 14, line 2, "bristles" should read --bristles--.
Claim 17, line 2, delete "brush" for clarity and consistency.
Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 8-13 and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Eliav et al. '283

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Eliav et al. '283 discloses in Figs. 2-3 and in various other embodiments, for example, an elongated powered toothbrush 100 with a handle 102 on one end and a head 120 on the other end thereof, comprising a face on one side of the head, the face including a first section and a second section, the first section defined by movable bristle carrier 180 being mounted for motion, drivingly connected to a drive assembly (paragraph [0016]) and having a first set of bristles 152 extending therefrom, the second section defined by second bristle carrier 132 being displaced from said first section and hingedly (paragraph [0059]) connected through thin plastic or elastomeric webs or supports (Figs. 4a, 4b, 15a, 15b, for example) and otherwise spaced apart from a remainder of said head, said second section remaining static when said first section moves and no other external forces are applied to said second section, said second

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section having a second set of bristles 152 extending therefrom, whereby, when said second set of tooth bristles are applied to the dentiture, said second section yields away therefrom.

As for claims 2 and 3, said first set of bristles is comprised of individual bristles, bristle tufts and/or elastomeric elements (paragraph [0052]).

As for claim 4, said first section contains a block defined merely by the head itself of movable bristle carrier 180 (Fig. 3, for example) from which said first set of bristles extend.

As for claim 5, said block is a disk of generally circular cross-section (Fig. 3).

As for claims 8, 9 and 10, the second section could be made from either a polypropylene or elastomeric material (paragraphs [0016] and [0067]).

As for claim 11, the second section is hingedly connected to a remainder of said head by a hinge deemed to be of sufficient thickness to prevent any vibrations or spurious resonance from moving said second section when said first section oscillates or rotates since it has shock absorbing characteristics (paragraph [0059]).

As for claim 12, the movement of said first section is selected from the group consisting of rotation, rotational oscillations vibration, translation, lateral, and any combination thereof (paragraph [0051]).

As for claim 13, said first and second sets of bristles are of different sizes or heights (paragraph [0052] and Fig. 18).

As for claim 15, said first and second sets of bristles can be of different inclinations (paragraph [0052]).

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As for claim 16, similarly as above, said second set of bristles can also have elements of different inclinations with respect to each other (paragraph [0052]).

As for claim 17, said first section is located more distal from the brush handle than said second section (Fig. 3).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eliav et al. '283.

As for claim 14 reciting that the first set of bristles are of different heights with respect to each other, Eliav '283 already teaches that the bristles can be formed to have different shapes and sizes (paragraph [0052]) and one skilled in the art would find it obvious to make bristles of the first set to be of different heights with respect to one another in order to enhance cleaning along the gumline and to permit the bristle surface to better fit tooth surfaces.

As for claim 18, it is old and well known to make bristles on a toothbrush to be softer or harder (or stiffer) than the other set(s). It would have been obvious to one skilled in the art to have modified Eliav '283 such that the second set of bristles are

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softer than on the first set in order to vary and thus enhance the ability of bristles to abrade and clean tooth surfaces.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference to Blaustein '525 is relevant to a multi-movement brush head arrangement.

10. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached at (571) 272-1281. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin
Primary Examiner
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